

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed September 13, 2004. Reconsideration and allowance of the application and presently pending claims 1-27, as amended, are respectfully requested.

1. **Present Status of Patent Application**

Upon entry of the amendments in this response, claims 1-27 remain pending in the present application. More specifically, claim 16 is directly amended and claims 21-27 are added. These amendments are specifically described hereinafter. It is believed that the foregoing amendments and additions add no new matter to the present application.

2. **Claim Objections**

The Office Action indicates that claim 16 is objected to because of an informality. Applicant has amended claim 16 and respectfully asserts that this claim is now in condition for allowance. Furthermore, the amendment to claim 16 merely presents the claim in better form for issuance and does not narrow the scope of claim 16 in any manner. Applicant appreciates the Examiner's suggested amendment to this claim.

3. **Double Patenting Rejection**

The Office Action indicates that claims 1, 6, 11 and 16 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 11, 2, 20 and 2, respectively, of U.S. Patent No. 6,308,320 in view of U.S. Patent No. 5,805,899.

In order to reduce the disputed issues and to allow the pending claims to proceed to issuance, Applicant submits herewith a terminal disclaimer and respectfully submits, therefore, that the double patenting rejection has been rendered moot. Accordingly, Applicant respectfully requests withdrawal of the rejection.

4. **Response to Rejection of Claims 1-20 Under 35 U.S.C. §102(a) and §103(a)**

In the Office Action, claims 1-10 and 16-20 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by prior art of record "SmartBuild High-Level Design Version 1.0" by *Burch* and *Nystrom* (hereinafter "*Burch*"). Additionally, claims 11-15 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Burch* in view of *Evans et al.* (U.S.

Patent 5,805,899). For a proper rejection of a claim under 35 U.S.C. Sections 102 or 103, the cited reference must be a valid prior art reference, such as “a printed publication in this or a foreign country.”

It is well established law that a document held confidential in a corporate or other organization is not a valid prior art reference upon which a rejection under 35 U.S.C. Sections 102 or 103 can be made. For example, see *Continental Oil Co. v Cloe*, 634 F.2d 188 (5th Cir. 1981), *cert. denied*, 454 U.S. 830 (1981).

The *Burch* document is an internal company document that was not available in any public forum, nor provided to any member of the public, at least before the October 23, 2001 filing date of the instant application. Applicant provides an affidavit pursuant to 37 C.F.R. 1.132 to this effect. Accordingly, the *Burch* document does not qualify as a valid reference to base a rejection under 35 U.S.C. Sections 102 or 103. Therefore, the rejection of claims 1-20 should be withdrawn.

5. Newly Added Claims 21-27

New claims 21-27 are based on subject matter that is explicit and/or inherent within the description of the specification and/or the drawings. Applicant submits that no new matter has been added in the new claims 21-27, and that new claims 21-27 are allowable over the cited prior art. Therefore, Applicant requests the Examiner to enter and allow the above new claims.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-27 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,



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